

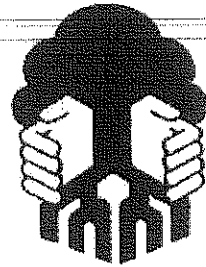
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Lancaster City Council
Planning Services
PO Box 4
Town Hall
Lancaster
LA1 1QR

18th January 2012

Dear Sir/Madam

Ref.: **TOWN & COUNTRY PLANNING ACT 1990**
TOWN & COUNTRY PLANNING (TREES) REGULATIONS 1999
TREE PRESERVATION ORDER No. 496 (2011), Land to the south-west of
Lune Industrial Estate and adjacent to Unit 10, Abbots Way, Lune Business
Park, Lancaster

OBJECTION

On behalf of my client, The Property Trust Group, I wish to formally object to the imposition of the above Tree Preservation Order. The objection is made in respect of Woodland W1, as specified in the first schedule to the order.

I carried out a general inspection of this site on Thursday the 12th of January 2012. I also carried out a brief tour of the neighbourhood of the site, in order to assess the trees' visibility from local public viewpoints, their individual impact, and their wider impact within the local landscape.

This objection is made on the following grounds:

1.0. Failure to comply with Regulation 3 of the 1999 Regulations.

1.1. The Council has not complied with the requirements of Regulation 3 of the Town and Country Planning (Trees) Regulations 1999 in that the "Regulation 3 Notice" accompanying service of the Tree Preservation Order contains no statement whatsoever of the Council's reasons for its making, as required by Regulations 3(1)(a)(ii) and 3 (2)(a). No reasons have been given for the making of the Order. In our view, this flaw fatally undermines the validity of the Tree Preservation Order, as it has not been correctly made and served in accordance with the Act or Regulations.

1.2. Failing to comply with Regulation 3(1)(a)(ii) and 3(2)(a) would render any decision to confirm the order unlawful and liable to quashing by the High Court. The requirements of Regulations 3(1)(a)(ii) and 3(2)(a) are fundamental, because persons who may be affected by the TPO must be able to understand in advance, and challenge if they wish to do so, the reasoning behind the TPO. Any reasons which are provided for the first time at the stage of confirmation of the TPO would be manifestly inadequate, because those affected by it are entitled to a proper opportunity (i.e. the 28 day period provided by the Regulations) to consider those reasons and respond to them.

1.3. Moreover, it is our understanding that the Council has not complied with the requirements of Regulation 3(1)(a) of the Regulations in that it has not served a copy of the Order on every owner and occupier of the land affected by the Order. The boundary of the area of W1 as drawn on the TPO encompasses an area on its north-eastern boundary which is not within our client's ownership, but is within the curtilages of adjacent industrial units to the north-east. We are informed that the relevant occupier of these industrial units has not been served with a copy of the TPO. The area of land in question is at least partially cleared, levelled and occupied by hard standing, a matter addressed in more detail below.

1.4. Following on from the above, it is clear that the Council cannot confirm the TPO as things stand, and it accordingly must be withdrawn immediately. If the Council wishes to pursue the making and confirmation of a TPO on this site (which for the detailed reasons given below, we consider to be unjustified in any case), a new one must be issued, accompanied by a notice properly including the reasons for the making of the Order, so that possible objectors are given the statutory 28 days to consider those reasons and address them; and it must be properly served on all persons interested in the land affected.

1.5. For these reasons, the Order in our submission clearly cannot stand and should therefore be immediately withdrawn.

2.0. Land included within W1 is not "woodland".

2.1. Without prejudice to the fundamental basis of objection as set out above, I set out below our objection to the designation of the affected land as "woodland", in the light of my recent inspection and prevailing central Government advice.

2.2. The overwhelming majority of the land included within the boundary of W1 as drawn on the TPO plan is not "woodland", by any definition or common understanding of that term. The central area of the site comprises open grassland containing no trees or woody shrubs at all, which formerly was occupied by both a cricket ground and a football pitch, as is clearly shown on the relevant Ordnance Survey map of the area. Although the grassland is currently overgrown and no longer managed as sports pitches, it remains open, with no tree or woodland cover.

2.3. The areas to the north, west and east of the open grassland are also not "woodland", but comprise areas of abandoned grassland overgrown with undergrowth of bramble, willowherb and other common ruderal vegetation, with

bushes and scrub consisting predominantly of hawthorn and elder, together with gorse, dogwood, goat willow and occasional ash. Whilst the density of this vegetation type varies, over almost the full extent of our client's ownership it can only properly be described as "scrub", rather than as "woodland". The few trees included are generally of indifferent or poor quality, and do not comprise any specimens of sufficient merit to warrant protection as individual specimens in their own right.

2.4. Although the term "woodland", is not defined within the 1990 Act, current Government guidance in Paragraphs 2.2 and 2.3 of the DETR document *Tree Preservation Orders – A Guide to the Law and Good Practice* (the "Blue Book") (March 2000) state:-

"2.2. Neither does the Act define the term 'woodland'. In the Secretary of State's view, trees which are planted or grow naturally within the woodland area after the TPO is made are also protected by the TPO. This is because the purpose of the TPO is to safeguard the woodland unit as a whole which depends on regeneration or new planting. But as far as the TPO is concerned, only the cutting down, destruction or carrying out of work on trees within the woodland area is prohibited; whether or not seedlings, for example, are 'trees' for the purposes of the Act would be a matter for the Courts to decide in the circumstances of the particular case.

2.3. A TPO may only be used to protect trees and cannot be applied to bushes or shrubs, although in the Secretary of State's view a TPO may be made to protect trees in hedges or an old hedge which has become a line of trees of a reasonable height and is not subject to hedgerow management. Separate legislation is in place to regulate the removal of hedgerows."

2.5. The application of this TPO to open grassland, and to bushes and shrubs, is therefore in direct conflict with Government guidance as to the appropriate use of Tree Preservation Orders, and therefore should not be confirmed for this reason.

2.6. The 1990 Act and the Blue Book do not define the term woodland, and there is no precise definition of "woodland" in either legislation or judicial decisions. Legally therefore, there is normally held¹ to be no particular reason to depart from the ordinary dictionary definition of "woodland" as "land covered with trees"². It is therefore reasonable to hold that the word "covered" implies that a substantial number (but not necessarily all) of tree canopies should be touching each other for an area or group of trees to be termed "woodland".

2.7. The concept of what constitutes "woodland" is, however, refined considerably by the definitions assigned to it by other authorities. For example, the Forestry Commission's *National Inventory of Woodland and Trees – Great Britain* (2003) defines it in the following terms:

"In the United Kingdom woodland is defined as land with a minimum area of 0.1 ha under stands of trees with, or with the potential to achieve, tree crown cover of more than 20%. Areas of open space integral to the woodland are also included. Orchards and urban woodland between 0.1 and 2 ha are excluded. Intervening land-classes such as roads, rivers or pipelines are disregarded if less than 50m in extent".

¹ The Law of Trees, Forests and Hedgerows, (2002) Mynors, C; section 15.6.6.

² New Oxford Dictionary of English (1998).

2.8. It is clear that in the present case, the vast majority of the area included within W1 does not accord either with the ordinary dictionary definition of the term "woodland", nor with the Forestry Commission's definition as cited above. Moreover, as mentioned above, the area of W1 includes land within the curtilage of adjacent industrial units to the north-east, which is partially, if not completely, levelled, cleared and laid to hard standing. The inclusion of this land has doubtless arisen as a result of the TPO plan being based on an out-of-date map base, but nonetheless, it is clear that the land so covered could not be considered to be "woodland" by any reasonable person.

2.9. The only part of the area encompassed by W1 within our client's ownership which could reasonably be described as comprising "woodland", according to ordinary understanding and the above definition, consists of a narrow strip of more established semi-mature trees (principally sycamore) and understorey of mature hawthorn concentrated towards the south-west corner of the site. At its maximum, this strip is only approximately 40m in width, and tapers down to only around 10m in width as one progresses eastwards along the southern limits of the site. This represents only a very small fraction of the land which has been designated as "woodland" within this TPO.

2.10. The designation of the open land and scrub as "woodland" is also at odds with the Council's own adopted policies for the area of the site, as discussed below.

3.0. TPO in conflict with Council's adopted policies for the site.

3.1. The designation of the entirety of the land south of the Lune Industrial Estate as "woodland" within this TPO is at odds with, and belied by, the Council's own planning policies for the area. The adopted 2004 Lancaster City Council Local Plan clearly identifies three different policy designations for the area, each of which is separately identified on the Proposals Map.

3.2. The areas of both the former cricket ground and the former football pitch are identified within the 2004 Local Plan as being governed by Policy R1, which defines them as "Outdoor Playing Spaces", and seeks to protect them from proposed development. This designation plainly acknowledges that the areas are not "woodland", and accordingly their inclusion within a woodland TPO is completely at odds with their identification under this policy.

3.3. Similarly, the areas of open grassland, weed growth, and encroaching scrubland surrounding the former playing areas are identified within the Local Plan as being subject to Policy E29, which defines them as "Urban Green Space". The supporting text to the policy defines these areas as "open space", which as a matter of common sense acknowledges that they are not "woodland". Again, their inclusion within a woodland TPO is therefore totally inconsistent with their identification under this policy.

3.4. Two strips of land along the western and southern boundaries of the site, and two rectangular areas to the south-east and east of the former playing pitches, are encompassed within a brown line on the Local Plan Proposals Map, which identifies

them as "Woodland Opportunity Areas", governed by Policy E27. The policy states, *inter alia*:-

"Within these areas, the Council will seek to establish new woodlands using predominantly native species and allowing, where practical, for public access and the protection and enhancement of nature conservation interests."

3.5. Although a footnote beneath the policy notes that it is partly superseded by policies within the Council's emerging Core Strategy, the wording of the policy makes it clear that its view of the area was that it represented an opportunity site for new woodland, rather than being an existing woodland (albeit that it does include the more wooded strip along the site's southern boundary discussed above). This further undermines the inclusion of the areas of scrub and undergrowth within a woodland TPO, as plainly the aspiration to create new woodland within the relevant areas had not been fulfilled at the time of the policy's formulation and adoption, and has not been brought about since.

3.6. In our view, therefore, the validity and appropriateness of the inclusion of our client's land within a single woodland TPO designation is clearly undermined by the Council's recognition, within its own adopted planning policies, that the site does not consist of woodland, and indeed has been sought to be safeguarded by two of these policies for purposes that are incompatible with woodland coverage.

4.0. Other Issues.

4.1. The coverage of W1 within the Order extends beyond the southern boundary of our client's site to include a strip of land adjacent to a public footpath running roughly east-west, which abuts open agricultural land to the south. It also extends to cover a roughly triangular-shaped area of land to the south-west of an existing area of recreation land (including a children's playground) adjacent to Willow Way. This area is similar in composition and vegetation coverage to parts of our client's land, being essentially overgrown undergrowth and scrub, albeit at a slightly denser level of coverage by the latter. Our understanding is that the both the strip adjoining the public footpath, and the triangular area, are within the ownership of the City Council.

4.2. Whilst there is nothing in legislation or guidance which would prevent the City Council from making a TPO on land within its own ownership and control, it is generally the case that Local Authorities are presumed to be responsible tree owners and managers, and that imposing a Tree Preservation Order on their own land is therefore unnecessary, and serves little, if any, useful public purpose.

4.3. Secondly, the circumstances and timing of the imposition of the Tree Preservation Order in this case suggest that it may have been prompted by our clients having recently commenced work to replace the broken and dilapidated former chain link fencing around the boundary of their land, in order to control unauthorised public access to it. By purporting to protect the entirety of the land within our client's ownership by designating it as a "woodland", the Order in our view represents an excessive and over-reactive response, primarily intended to act as an obstacle to any potential future lawful aspirations for the development or other beneficial use of the land by our clients. This is not in accordance with the proper

use or purpose of Tree Preservation Orders, which is to protect selected trees and woodlands in the public interest, "if their removal would have a significant impact on the local environment and its enjoyment by the public."

5.0. Conclusion.

5.1. The Council has not complied with the requirements of Regulation 3 of the Town and Country Planning (Trees) Regulations 1999, as no reasons have been given for its making, and it has not been correctly served on all interested parties. It should therefore be withdrawn immediately, as it cannot lawfully be confirmed.

5.2. The Order purports to designate land as "woodland" which manifestly does not contain or comprise woodland, but includes open neglected grassland, undergrowth and scattered bushes and scrubland, as well as land which has been cleared and laid to hard standing. Only a very small strip of the land within our client's ownership is comprised of a vegetation type which could reasonably be described as "woodland", and this occupies only a tapering narrow strip in the extreme south-west corner and along the southern boundary. The Council's own planning policies recognize that the majority of the site is not woodland, and applies other policy designations which reflect its non-woodland land use.

5.3. The circumstances of the Order's making suggest that its purpose is not in accordance with the proper use and purpose of Tree Preservation Orders, but to impose a form of blanket control which is entirely inappropriate, and incompatible with the letter and spirit of relevant government guidance. Furthermore, there is no evidence that the Local Planning Authority has undertaken any "structured and consistent" assessment of the site, contrary to the relevant guidance.

5.4. For these reasons, this Tree Preservation Order is therefore fundamentally flawed and in clear conflict with Government guidance on the use of Tree Preservation Orders. In our submission, to confirm it would be both unlawful, and directly contrary to Government advice.

5.5. On behalf of my client, I thus request that this Tree Preservation Order be withdrawn, and not confirmed.

Yours faithfully

Mark Mackworth-Praed BA (Cantab.), M.Sc., F. Arbor. A.
For Simon Jones Associates Ltd.